

Order

Michigan Supreme Court
Lansing, Michigan

March 7, 2025

Elizabeth T. Clement,
Chief Justice

166189

Brian K. Zahra
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

3M COMPANY,
Plaintiff-Appellee,

v

SC: 166189
COA: 364067
Court of Claims: 21-000078-MZ

DEPARTMENT OF ENVIRONMENT, GREAT
LAKES, AND ENERGY,
Defendant-Appellant.

By order of November 22, 2024, the parties were directed to file supplemental briefs. On order of the Court, the supplemental briefs having been received, the application for leave to appeal the August 22, 2023 judgment of the Court of Appeals is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals and REMAND this case to that court to address: (1) whether the plaintiff-appellee's challenge to rule set 2019-35 EG, "Supplying Water to the Public," codified at and amending in part Mich Admin Code, R 325.10101 to 325.12820, became moot when the defendant-appellant promulgated rule set 2020-130 EQ, "Cleanup Criteria Requirements for Response Activity," codified at and amending in part Mich Admin Code, R 299.1 to 299.50; (2) whether any exception to the mootness doctrine is applicable; (3) whether the plaintiff-appellee failed to exhaust its administrative remedies by not requesting a declaratory ruling from the agency as to the validity of the challenged rule before commencing this lawsuit, MCL 24.264; and (4) if the administrative remedies were not properly exhausted, what effect, if any, that had on the justiciability of this lawsuit, including plaintiff-appellee's standing and the court's subject-matter jurisdiction over the claims presented. See *Mich Farm Bureau v Dep't of Environment, Great Lakes, and Energy*, 514 Mich ___, ___ n 25 (July 31, 2024) (Docket No. 165166); slip op at 24 n 25; *Hendee v Putnam Twp*, 486 Mich 556, 573-578 (2010); *In re Harper*, 302 Mich App 349, 356-357 (2013); *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 51-54 (2000).

We do not retain jurisdiction.

CLEMENT, C.J., and ZAHRA, J., would deny leave to appeal.

THOMAS, J., did not participate in the disposition of this case because the Court considered it before she assumed office.



t0304

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 7, 2025

Clerk